IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1491 OF 2003

Shri Hassanand Bhatia. .. Petitioner.

vs.

Smt. Asha Meghraj Gehi

& Ors. .. Respondents.

Mr. R.A. Thorat for petitioner.
Ms. Gauri Godse for respondents 1 to 3.

Coram: J.N. PATEL, J.

Date: 26th July, 2006.

P.C.

. Heard.

2. The petitioner claims to be tenant of the premises who has resiled from the consent terms which came to be filed between the parties before the Court of Small Causes. The consent terms were taken on record and the Hon'ble Judge passed an order as under:-

> "Plaintiff No. 2 and the defendant with his Advocate consented and verified the decree marked at (Exh. A) A decree in terms of

Consent Terms are drawn at (Exh. A) be confirmed part of the decree, but half of the Court fees be refunded to the plaintiff. No order as to costs."

3. It is thereafter that the petitioner felt that he has been misled by the Advocate in connivance with the plaintiff-landlord and initiated proceedings to set aside the decree passed on the basis of the consent terms dated 27.1.94 for eviction by taking out Misc. Notice No. 40 of 1996. The said proceedings resulted in favour of the petitioner-tenant who was the original defendant. The respondent-plaintiff who is the landlord, approached the Bench of the Small Causes Court by preferring Revision Application No. 13 of 2000 wherein the Court held that the consent terms were fild by the parties out of their volition and the trial Court having satisfied itself after putting the necessary queries to the parties of their having read and understood the consent terms and verified its contents as accepted and, therefore, the consent terms were binding on the parties and the impugned order was quashed and set aside.

4. The learned counsel for the petitioner submits that one Mr. Malde misled the petitioner into signing the vakalatnama and some other advocate appeared for him when the consent terms were presented and, therefore, as the petitioner has not given any

authority to the said advocate the consent terms are not binding on him. The Revisional Court has taken into consideration all the aspects of the matter. This Court finds that the findings recorded by the Revisional Court are borne out from the record and proceedings of the trial Court where consent terms came to be filed. It has been specifically observed by the Revisional Court that though the petitioner made serious allegations against the Advocate Mr. Malde which were refuted by him by filing an affidavit. The petitioner did not call him for cross-examination in the witness box. Therefore, the contention of the petitioner that fraud was played by Mr. Malde, Advocate, by misleading him in obtaining his signature cannot be accepted.

5. Another contention is that the petitioner is an old man and on that day he did not carry his spects but blindly signed the paper presented to him by his Advocate. At least the petitioner admits of having put his signature on the consent terms. It is not the case of the petitioner that he is illiterate and does not know English. Further the proceedings disclose that there were negotiations between the parties and the petitioner also enjoyed certain concessions in rent from the plaintiff and it is out of these negotiations that consent terms came to be filed. Therefore, now the petitioner cannot be heard to say that the consent terms were obtained by misrepresentation and fraud.

Therefore, this Court does not find that the Revisional Court committed any error or irregularity in arriving at the conclusion that the consent terms are valid and binding on the parties.

6. In the opinion of this Court such proceedings are nothing less than abuse of the process of Court and deserves to be dealt with seriously. Therefore, this Court dismisses the petition with costs. Needless to say that as the petition is dismissed the interim reliefs granted by this Court stand vacated.

(J.N. Patel, J.)